

The issues presented on appeal are: whether Paul Alejandro Reyes Hidalgo, Brenda Fabiola Reyes Hidalgo, Luz Alicia Reyes Reyes and Vanesa Reyes Reyes are related to the deceased by consanguinity; whether the above-named claimants were actually dependent upon the decedent at the time of his death pursuant to K.S.A. 44-510b

and; whether they are wholly dependent children as defined by K.S.A. 44-508 of the Workers Compensation Act.

At oral argument, the parties stipulated that dependency claims had also been made by the decedent's parents and sister which would potentially entitle them to receive benefits contrary to the interests of the nieces and nephew. The parties further acknowledged, however, that the issue regarding the rights of the parents and the sister was not presented to nor decided by the Administrative Law Judge and the only issues for consideration by the Appeals Board are the status of the nieces and nephew and their entitlement to benefits under the Kansas Workers Compensation Act.

#### **FINDINGS OF FACT**

After having reviewed the entire record, the Appeals Board makes the following findings of fact and conclusions of law:

Decedent, Juan Manuel Reyes, died in an automobile accident on July 6, 1994, which arose out of and in the course of his employment with respondent. Decedent left no surviving spouse, birth children or adopted children of his own. Decedent did regularly send money to his parents, sister, three nieces and one nephew, all of whom reside in Mexico and all of whom claim they are decedent's dependents.

The record indicates a money order for \$500, as well as a registered letter which was insured for \$1,000, was sent to the decedent's father in Mexico. This is the only documentation in the record which will verify that money was actually sent to the family from the decedent. There is testimony, however, through various friends and family members of claimants that cash money was regularly transported to Mexico and presented to the decedent's father. The indications were that the money was primarily intended for the three nieces and one nephew, with occasional monies being provided to the decedent's parents and sister. The amounts of money sent would vary anywhere from \$100 to \$500 per trip. The various witnesses could not verify that the sums provided were for the children exclusively nor testify with certainty as to how the money was spent. They are all consistent, however, in their testimony that decedent regularly sent money to Mexico and the primary purpose of this money was to support the decedent's nieces and nephew.

#### **CONCLUSIONS OF LAW**

In order to decide the status of the three nieces and one nephew, the Appeals Board will first consider the language of K.S.A. 44-510b and K.S.A. 44-508(c) as they deal with dependents, members of an employee's family, and children.

K.S.A. 44-510b states in part:

Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510 and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee's earnings at the time of the accident, all compensation benefits under this section shall be paid to such dependent persons. Such dependents shall be paid weekly compensation . . . subject to the following:

(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.

K.S.A. 44-508(c)(1) defines dependents to mean "such members of the employee's family as were wholly or in part dependent upon the employee at the time of the accident."

K.S.A. 44-508(c)(2) defines "members of a family" to mean:

[O]nly surviving legal spouse and children; or if no surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters.

This section also states that the term "children" will include stepchildren as well as adopted children.

The term "wholly dependent child or children" is defined in K.S.A. 44-508(c)(3) and includes birth children or adopted children; stepchildren who live in the employee's household; any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity; or any child, as defined in this subsection who is less than 23 years of age and is not capable of earning substantial and gainful wages or is a student at an accredited institution of higher education or vocational education.

Respondent argues the terms "dependents" and "members of a family" as defined in K.S.A. 44-508(c)(1) and (c)(2) limit the definition of the term "wholly dependent children" in (c)(3). Respondent argues that since the terms "nieces" and "nephews" are not specifically listed as "members of a family" in (c)(2), then nieces and nephews are not "dependents" as defined by the Act and are not entitled to benefits as set forth in K.S.A. 44-510b. Claimants, on the other hand, claim the terms "nieces" and "nephews" do fit within the term "wholly dependent children" as defined by K.S.A. 44-508(c)(3)(C), which includes "any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity . . . ."

Consanguinity, as defined by Black's Law Dictionary 303 (6th ed. 1990), is "[k]inship; blood relationship; the connection or relation of persons descended from the same stock or common ancestor."

The dictionary further distinguishes between two types of consanguinity, that being lineal and collateral. Lineal consanguinity exists between persons descended in a direct line as between father, son, grandfather, etc. Collateral consanguinity, on the other hand, is "that which subsists between persons who have the same ancestors, but who do not descend (or ascend) one from the other." This would include uncles, nieces and nephews in the collateral consanguinity definition. The Appeals Board finds that the nieces and nephew of the deceased are related to the decedent by collateral consanguinity and, therefore, satisfy that portion of K.S.A. 44-508(c)(3)(C).

Respondent contends the nieces and nephew cannot be considered as dependents under the Kansas Workers Compensation Act. Whether a particular person is actually dependent upon a decedent is a question of fact. Wade v. Scherrer & Bennett Const. Co., 143 Kan. 384, 54 P.2d 944 (1936).

While the attorney for the nieces and nephew concedes that the nieces and nephew were only partially dependent upon the decedent, he argues if this partial dependency status is verified, then it would satisfy the requirements of K.S.A. 44-508(c)(3)(C). In Larson's Workers' Compensation Law, § 63.12(a), 11-118 (1997), partial dependency may be found when:

[A]lthough the claimant may have other substantial sources of support from his own work, from property, or from other persons on whom claimant is also dependent, the contributions made by the decedent were looked to by the claimant for the maintenance of his accustomed standard of living.

In this instance, the nieces and nephew lived in the house of decedent's parents and were regularly provided benefits by them. The funds provided by the decedent to the nieces and nephew were funds upon which the nieces and nephew depended to allow them to improve their lifestyle. After the decedent's accident, the mother of the nieces and nephew testified that her children were going without things for longer periods of time and not receiving certain benefits to which they had become accustomed during the decedent's life. This would indicate that the funds used from the decedent helped improve the accustomed standard of living of the nieces and nephew.

Additionally, while the record is unclear as to the specific amounts of money provided from the decedent, there were numerous witnesses deposed who testified that money was regularly sent by the decedent to his father for the benefit of the nieces and nephew. The decedent's father testified that most of the money provided from the decedent was intended for the benefit of the nieces and nephew, with only occasional monies going to the benefit of the other family members. Several witnesses testified to

taking anywhere from \$100 to \$500 in cash to the father of the decedent for the purpose of providing benefits to the nieces and nephew.

In considering the evidence of contribution and the definitions set forth in both Larson's, and Black's Law Dictionary, *supra*, the Appeals Board finds the three nieces and one nephew of the deceased were partially dependent upon decedent at the time of his death. "Wholly dependent child or children" as defined in K.S.A. 44-508(c)(3)(C) includes any other child who is actually dependent in whole or in part on the employee and who is related to the employee by consanguinity. Therefore, the Appeals Board finds that the three nieces and one nephew, who were partially dependent upon decedent and related to decedent by consanguinity, could fit the definition of "wholly dependent children" as defined by K.S.A. 44-508(c)(3)(C).

However, the Board must next consider whether partial dependency and the claimants' status as nieces and nephew disqualifies them from receiving benefits under the Act. K.S.A. 44-510b(a) requires that the dependents be "wholly dependent" upon the decedent at the time of his death in order to receive full benefits. The Workers Compensation Act makes no provision for the payment of partial compensation to partially dependent spouses or children. In Brinkmeyer v. City of Wichita, 223 Kan. 393, 573 P.2d 1044 (1978), the Court found that, if the children are but partially dependent, then all payments would be made to a surviving legal spouse. However, no surviving legal spouse exists in this circumstance. In Killingsworth v. City of Wichita, 16 Kan. App. 2d 801, 830 P.2d 70 (1992), the court was asked whether K.S.A. 1991 Supp. 44-510b and K.S.A. 1991 Supp. 44-508(c) could be interpreted to include a birth child as a wholly dependent child even though the child was not receiving financial support from the deceased employee and, therefore, was not wholly dependent upon the decedent at the time of death. The court in Killingsworth noted that, after the Brinkmeyer decision, the 1979 Legislature amended both K.S.A. 44-508 and K.S.A. 44-510b by adding a new section, K.S.A. 44-508(c)(3), which specifically defines "wholly dependent child or children." The court found that, since the Legislature had chosen the term "wholly dependent child or children" in K.S.A. 44-510b(a)(1) and defined it in K.S.A. 44-508(c)(3), then the court must structure its interpretation of the statute in accordance thereto. Therefore, since "wholly dependent child or children" as referred to in K.S.A. 44-510b(a)(1) was defined in K.S.A. 44-508(c)(3)(A) as "a birth child or adopted child of the employee," then the fact K.S.A. 44-508(c)(3)(A) did not mention the need for financial dependency meant such a showing of dependency was not required for the child to receive benefits under the Act.

The holding in Killingsworth was limited to the application of the Act to birth children. In this case, the Board must decide whether nieces and nephews are "wholly dependent children" under subsection (c)(3)(C) of K.S.A. 44-508 and entitled to benefits under K.S.A. 44-510b. Neither claimant nor respondent cite a Kansas appellate court case on point with this issue. Likewise, the Board's research has failed to uncover Kansas precedent discussing the definition of "wholly dependent children" contained in K.S.A. 44-508(c)(3)(C) as it applies to nieces and nephews.

Since the nieces and nephew were partly dependent upon decedent at the time of his death and were related to him by collateral consanguinity, then on the surface it would appear they fit within the definition of “wholly dependent children” as defined in K.S.A. 44-508(c)(3)(C) and thus would be entitled to benefits under the provisions of K.S.A. 44-510b(a)(1), which awards benefits to “a wholly dependent child or children . . . who . . . [is] . . . eligible for benefits under this section . . . .” However, the Appeals Board is concerned that circumstances could arise where a decedent has a birth child one hundred percent dependent upon decedent at the time of death. But if the decedent in that circumstance were to have given financial support to a niece or nephew as well, who was determined to be partly dependent upon decedent, then a situation could arise where the birth child, as a wholly dependent child under K.S.A. 44-508(c)(3)(A), would have to share the benefits set forth in K.S.A. 44-510b equally with a niece or nephew who was but partly dependent upon decedent but nevertheless considered a wholly dependent child under the definition in K.S.A. 44-508(c)(3)(C).

When considering the Workers Compensation Act as a whole, it is incongruous to interpret K.S.A. 44-510b and subsections (c)(1) and (c)(2) of K.S.A. 44-508, which define “dependents” and “members of a family,” to permit a decedent’s nieces and nephew, who were but partly dependent upon decedent, to be awarded benefits as children in direct competition with children wholly dependent upon the decedent’s earnings at the time of his death.

When the interpretation of one section of the Workers Compensation Act appears to conflict with another section, the entire Act should be construed according to its spirit and reason, disregarding as may be necessary the strict letter of the law. McKinney v. General Motors Corp., 22 Kan. App. 2d 768, 921 P.2d 257 (1996). As a general rule, statutes are construed to avoid unreasonable results. Wells v. Anderson, 8 Kan. App. 2d 431, 659 P.2d 833, rev. denied 233 Kan. 1093 (1983). The Appeals Board finds that interpreting K.S.A. 44-510b and K.S.A. 44-508(c) to allow nieces and nephews to be deemed “dependents” or “members of a family,” when the terms “nieces” and “nephews” clearly do not fit within the definitions of “dependents” or “members of a family” would lead to an unreasonable result. Further, the Appeals Board does not believe the Legislature intended so broad an application of “wholly dependent children” as used in K.S.A. 44-510b and K.S.A. 44-508(c) to include nieces and nephews even where those nieces and nephews could be deemed “wholly dependent children” under the specific definition set forth in subsection (c)(3)(C) of K.S.A. 44-508 and in direct competition with a decedent’s children.

In addition, the term “child” appears to refer to lineal consanguinity here; i.e., child means child, stepchild, grandchild, etc. The term “child” is too limited to include nieces and nephews.

Because the legislative history does not indicate the Legislature intended such a broad application of “wholly dependent children” as set forth in K.S.A. 44-510b or K.S.A.

44-508(c) and because such an application could yield an unreasonable and incongruous result, the Appeals Board finds the nieces and nephew are not “dependents” or “members of a family” as those terms are defined in subsections (c)(1) and (c)(2) of K.S.A. 44-508 and, therefore, are not entitled to benefits as “dependents” under the provisions set forth in K.S.A. 44-510b.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Kenneth S. Johnson dated September 25, 1997, should be, and is hereby, reversed. This matter is remanded to the Administrative Law Judge for a determination of any and all remaining issues.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:    Wendel W. Wurst, Garden City, KS  
     Douglas C. Hobbs, Wichita, KS  
     Office of Administrative Law Judge, Garden City, KS  
     Philip S. Harness, Director